

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

NATHAN O'GRADY and CODEY
O'GRADY, Husband and Wife,
Individually and Next Friend of B.T.O.,
A Minor,

Plaintiffs,

vs.

JOHN T. SYMONDS, D.O.

Defendant,

Case No.

**COMPLAINT AND REQUEST FOR TRIAL
IN LINCOLN, NEBRASKA, AND
REQUEST THAT SECTION 44-2825 OF
THE NEBRASKA HOSPITAL- MEDICAL
LIABILTY ACT BE DECLARED
UNCONSTITUTIONAL**

The following allegations apply to all counts:

1. Parties

- a. Plaintiff Codey O'Grady is a resident of Richardson County, State of Nebraska, and was at all times married to Plaintiff Nathan O'Grady, and is next friend of B.T.O., her minor child.
- b. Plaintiff Nathan O'Grady is a resident of Richardson County, State of Nebraska, as was at all times married to Plaintiff Codey O'Grady and is next friend of B.T.O., his minor child.
- c. B.T.O. is the minor child of Nathan O'Grady and Codey O'Grady, is a resident of Richardson County, Nebraska, and was born on March 29, 2007. This action is brought by Nathan and Codey O'Grady on behalf of said minor.
- d. Defendant John T. Symonds, D. O., is licensed to practice medicine in the states of Nebraska and Missouri and is a resident of Holt County, Missouri. At all times he was practicing medicine in Falls, City,

Nebraska, and was on the staff of Community Hospital, Falls City Nebraska.

2. This court has jurisdiction under the provisions of 28 U.S. Code, Section 1332 (1) because the plaintiffs and the defendant are residents of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

3. The conduct hereinafter set forth occurred in Richardson County Nebraska.

4. Plaintiff Codey O'Grady became pregnant with B.T.O. during the latter part of 2006. She retained the services of the defendant to provide obstetric care for her. Codey O'Grady was admitted to the hospital under the care of the defendant on March 28, 2007. B.T.O was born on March 29, 2007.

5. Defendant fell below the reasonable standard of care in his treatment of Codey O'Grady and B,T.O in the following respects;

- a. Failing to come to the hospital when called by nursing for non-reassuring fetal status;
- b. Starting Pitocin in the face of non-reassuring fetal status;
- c. Failing to timely perform a C/section;
- d. Failing to properly interpret and act upon non-reassuring fetal monitor strips;
- e. Failing to perform appropriate intra-uterine resuscitative measures;
- f. Failing in other ways to manage Codey O'Grady's condition and that of her unborn child in accordance with the applicable standard of care; and
- g. Other negligent acts or omissions that may become apparent

throughout the course of discovery.

6. The plaintiffs elect to waive filing this case with a medical review panel pursuant to Neb.Rev.Stat. § 44-2840(4). Plaintiff has concurrently filed a copy of this complaint with the Nebraska Director of Insurance.

7. That section of the Nebraska Hospital-Medical Liability Act, that provides a limit on damages, Neb.Rev.Stat. § 44-2825, is unconstitutional as in violation of the Due Process Clause of Amendment 14, U.S. Constitution, and Article 1, Sec 3, Nebraska Constitution.

COUNT I

MEDICAL NEGLIGENCE CLAIM OF CODEY O'GRADY

8. As a proximate result of the defendant's negligence, plaintiff Codey O'Grady incurred damages as follows:

- a. Permanent injury
- a. Medical expenses, past and future;
- b. Loss of wages ;
- c. Loss of earning capacity;
- d. Pain, suffering, and mental anguish, past and future.

WHEREFORE, Plaintiff Codey O'Grady prays for judgment against defendant in the amount of \$10,000,000.00 and costs and interest, that the liability and damages portions of the trial be bifurcated, and that Neb.Rev.Stat. § 44-2825 be declared unconstitutional.

COUNT II

CLAIM OF NATHAN O'GRADY

FOR LOSS OF CONSORTIUM AND OTHER DAMAGES

9. As a proximate result of the negligence of defendant Plaintiff Nathan O'Grady lost consortium of his wife Codey and incurred medical and other expenses on behalf of his child B.T.O, a minor, and has been damaged as follows:

- a. Loss of wages, past and future;
- b. Medical expenses, past and future; and,
- c. Pain, suffering, and mental anguish, past and future.

WHEREFORE, Plaintiff Nathan O'Grady prays for judgment against defendant in the amount of \$10,000,000.00 and costs and interest, that the liability and damages portions of the trial be bifurcated, and that Neb.Rev.Stat. § 44-2825 be declared unconstitutional.

COUNT III

MEDICAL NEGLIGENCE CLAIM OF B.T.O.

10. As a result of the negligence of the defendant, B.T.O. incurred birth trauma resulting in permanent injury and disability.

11. Plaintiff B.T.O. has incurred the following damages:

- a. Medical expenses, past and future;
- b. Loss of earning capacity; and,
- c. Pain, suffering, and mental anguish, past and future.

WHEREFORE, Plaintiffs Nathan O'Grady and Codey O'Grady pray for judgment against defendant in the amount of \$20,000,000.00 and costs and interest, that the liability

and damages portions of the trial be bifurcated, and that Neb.Rev.Stat. § 44-2825 be declared unconstitutional.

COUNT IV

BY-STANDER LIABILITY CLAIM

OF CODEY O'GRADY AND NATHAN O'GRADY

12. Plaintiffs Codey and Nathan O'Grady were both present when their child BTO was born; and both saw him suffer birth trauma and life threatening asphyxia.

13. The negligence of defendant committed on B.T.O., as aforesaid, inflicted severe emotional distress on said plaintiffs, and they are entitled to recover damages for emotional distress past and future.

WHEREFORE THE Plaintiffs Codey O'Grady and Nathan O'Grady pray for judgment against defendant for \$5,000,000.00 plus costs and interest.

NATHAN O'GRADY and CODEY
O'GRADY, Husband and Wife,
Individually and as Next Friends of
B.T.O., A Minor, Plaintiffs

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/s/ Herbert J. Friedman
Herbert J. Friedman #11390
One of said attorneys

REQUEST FOR TRIAL

Plaintiffs request trial in Lincoln, Nebraska.

/s/ Herbert J. Friedman
Attorney for Plaintiffs

PRAECIPE

TO THE CLERK OF THE COURT:

Please issue Summons, endorsed according to law, for service upon the following defendants. Service will be by certified mail.

John T. Symonds
410 Lake Shore Drive
Bigelow, MO 64437-7183

John T. Symonds
216 East 16th Street
Falls City, NE 68355

/s/ Herbert J. Friedman
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a duplicate original copy of this complaint was served on the Nebraska Director of Insurance and Nebraska Attorney General by certified mail, return receipt requested on this 19th day of September, 2008.

/s/ Herbert J. Friedman
Herbert J. Friedman